IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO.2297 OF 2006

Shayamsunder R. Agarwal, adult, 41 years,)
Occ. Business, Residing at Own Hosue,)
Ram Mandir Road, Bhayandar (W), Tal. &)
Dist. Thane.) ... Petitioner

Versus

1. State of Maharashtra)
2. The Superintendent of Police, Thane)
Rural.)
3. Shri Ashok Vastrad, Police Inspector,)
Bhayandar Police Station, Bhayandar)
(W).) ... Respondents

Mr. M.S. Mohite with Mr. Sandesh D. Patil for the petitioner.

Mr. S.R. Borulkar, Public Prosecutor for the respondent-State.

Mr. M.K. Kocharekar for respondent 3.

CORAM : SMT. RANJANA DESAI, &
ANOOP V. MOHTA, JJ.

DATE ON WHICH THE JUDGMENT RESERVED : 9TH MARCH, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 30TH APRIL, 2007.

JUDGMENT:- (Smt. Ranjana Desai, J.)

1. In this petition, following questions arise.

    1. Whether once an information relating to commission of a cognizable offence is received by a police officer in charge of a police station, he is duty bound to register a FIR under section 154 of the Code of Criminal Procedure (for short, "the Code").

    2. Whether it is open to the police officer to make a preliminary inquiry to find out whether information received by him discloses cognizable offence or not.

    3. Whether remedy of filing a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code is open to a person aggrieved by the refusal of the police officer to register a FIR when alternative remedy of filing a private complaint is open to him.

2. The learned counsel appearing for the petitioner and the respondents

have addressed us on the above questions. Since the above questions of law have arisen in some other petitions also, the learned counsel Ms. Anjali Iyer and Mr. J.S. Kini have requested us to give them a hearing. We have accordingly heard them.

3. The facts of the present petition will have to be shortly stated.

The petitioner claims to be a businessman. He carries on business in Mira Bhayandar area. He is carrying on business of real estate. According to him, he had received threatening calls from the members of underworld and hence the police had given him protection. According to the petitioner in the year 2004, he had applied for a revolver licence. At that time, respondent 3, PI Vastrad attached to Bhyandar Police Station (West), had given him a certificate that no criminal cases were pending against him. The said certificate is dated 20/2/2006.

4. The petitioner' scase is that thereafter he had applied for issuance of passport. The passport authorities wanted a certificate about the background of the petitioner. The petitioner approached respondent 3 for the certificate. Respondent 3 started demanding bribe from the petitioner. According to the petitioner, respondent 3 threatened the petitioner that if the petitioner does not yield to his demand, he would not give a positive report against him.

According to the petitioner, respondent 3 gave a false report that C.R. No.13 of 2003 was pending against him though the petitioner was acquitted therein. The petitioner' scase is that the earlier report dated 20/2/2006 is contrary to the report sent by respondent 3 to the passport authorities and this is not a mistake, but it is done deliberately because the petitioner did not pay money to respondent 3.

5. According to the petitioner, he approached the Superintendent of Police, Thane Rural, respondent 2. Vide letter dated 28/4/2006, respondent 3 was directed to give a fresh report. Due to false information given by respondent 3, the petitioner was required to pay a fine of Rs.5,000/-. The petitioner, therefore, sent a complaint to Deputy Superintendent of Police, vide letter dated 7/9/2006 and requested him to take action against respondent 3. The petitioner also filed a complaint on 14/9/2006 with the Superintendent of Police and requested him to register an offence against respondent 3. It was stated in this complaint that the lower authorities were not registering complaint against respondent 3 despite the fact that the complaint shows commission of a cognizable offence.

6. According to the petitioner, on two occasions, he was called by the police in connection with his complaint. Once he was called by Deputy Superintendent of Police, Vasai and on another occasion, he was called by

Sub-Divisional Police Officer. But on both the occasions, no one was present to attend to the petitioner. The petitioner has, therefore, approached this court praying, inter alia, for a direction to the police to register a complaint / First Information Report (for short, "the FIR") against respondent 3.

7. We have heard Mr. Mohite, the learned counsel appearing for the petitioner. Mr. Mohite took us to the relevant provisions of the Code. He submitted that section 154 of the Code refers to every information relating to a cognizable offence. The word "information" is unqualified as to the truth or veracity of the said information. The said section requires that the information should relate to commission of a cognizable offence. It does not say that the information should disclose commission of a cognizable offence. According to Mr. Mohite, section 154 of the Code does not give any discretion to the officer in charge of a police station to make any inquiry to satisfy himself that a cognizable offence has been committed or has been disclosed when he receives an information which relates to commission of a cognizable offence. Mr. Mohite submitted that even if the information does not disclose a cognizable offence but relates to commission of a cognizable offence, he is bound to record the said information.

8. Mr. Mohite further submitted that it is pertinent to note that even in respect of non-cognizable offence, a mandatory duty has been cast upon the

officer to enter substance of the information relating to the commission of the non-cognizable offence in the prescribed book.

9. Referring to section 156 of the Code, Mr. Mohite contended that this section provides unbridled power to the police officer to investigate a cognizable offence. The Magistrate cannot stop an investigation or sanction commencement of an investigation of a cognizable offence. Mr. Mohite pointed out that power is given to the Magistrate under section 156(3) of the Code to order an investigation and such power would naturally be exercised only in case the police officer refuses to investigate the matter. Mr. Mohite submitted that the refusal of the investigation is, therefore, controlled by the Magistrate and, hence, under the scheme of Chapter XII, the Magistrate is required to be kept informed at all stages starting from section 154. In case the police officer refuses to register the information under section 154 of the Code, the entire supervisory power to be exercised by the Magistrate under Chapter XII will become ineffective.

10. Mr. Mohite pointed out that section 157 of the Code, for the first time, gives discretion to the police officer to investigate the information. The only qualification is that he should have reason to suspect the commission of an offence. If he has no reason to suspect that an offence is committed or that

he is satisfied that no offence is committed he has complete discretion to decide not to investigate the case. Mr. Mohite pointed out that whether the police officer decides to investigate or not, he has to send a report to the Magistrate about this fact. The discretion to investigate or not to investigate can only be exercised under section 157(1)(b) of the Code and not under section 154. If the police officer decides not to investigate then under section 157(2), he has to make a report stating reasons for not fully complying with the requirements of that sub-section. He has also to inform the complainant that he will not investigate the case.

11. Mr. Mohite then referred to section 158 of the Code and submitted that under this section report to the Magistrate has to be submitted through the superior officer appointed by the State Government. This section gives supervisory power to the superior officer over the report and actions which are taken by the police station officer. Mr. Mohite contended that if section 154 of the Code is held not to be mandatory then sections 157 and 158 would be rendered nugatory.

12. Drawing our attention to section 159, Mr. Mohite contended that this section gives supervisory power to the Magistrate over investigation into any complaint if the police refuse to investigate. If the police refuse to investigate, the Magistrate is empowered to direct an investigation under section 156 (3)

or himself investigate the case. If section 154 is not held to be mandatory then even section 159 would be rendered totally nugatory as the information and the decision of the police not to investigate the case and the reasons to be given by the officer for not investigating the case could never reach the Magistrate.

13. Mr. Mohite submitted that at the stage of section 154, no discretion vests in the police station officer. He submitted that since the law prescribes the manner in which the police should investigate or decide not to investigate any information, any other mode introduced would be contrary to the law as set out in Chapter XII of the Code. According to Mr. Mohite, even frivolous complaints or false complaints or exaggerated complaints are required to be registered. Such complaints need not be investigated after registering the information. Even if the report is sent to this effect to the learned Magistrate, the learned Magistrate can satisfy himself that the decision taken by the police officer is correct. The informant is also informed that the police will not investigate the case so that he can take further steps according to law. Mr. Mohite submitted that the procedure provided by the court secures ends of justice and any view other than the one which is canvassed by him would defeat the ends of justice. In support of his submission Mr. Mohite placed heavy reliance on the judgment of the Supreme Court in ***State of Haryana & Ors. v. Bhajanlal & Ors., AIR 1992 SC 604***. Mr. Mohite also relied on the

judgments of the Supreme Court in ***State of U.P. v. Bhagwant Kishore Joshi, AIR 1964 SC 221, Lallan Chaudhary & Ors. v. State of Bihar & Anr., 2006 SAR (Cri.) 934*** and the judgment of this court in ***Dnyandeo Krishna Chaudhary & Anr. v. State of Maharashtra & Ors. (1999) 2 Mh.LJ 154***.

14. Learned counsel Ms. Anjali Iyer adopted all the arguments of Mr. Mohite. In addition to that, she submitted that non-registration of crime will not serve the purpose of anybody. If the informant has given false information, after registration of the crime, the police can take proper action against him as per law for giving false information. Ms. Iyer submitted that even those persons against whom false allegations are made in the information given, can also take proper action against the informant for giving false information. But whether the information given is false or true can be established only after proper investigation of the crime registered on the basis of the information given by the informant.

15. Ms. Iyer submitted that it is true that the complainant can file a private complaint. But availability of an alternative remedy is no substitute for registration of FIR. According to Ms. Iyer refusal to register a FIR in spite of disclosure of cognizable offence amounts to dereliction of duty by police

officer. Ms. Iyer submitted that if it is held that if the police do not register FIR, the complainant has to file a private complaint, the police will use it as a handle to drive some people to the Magistrate. It will also encourage discrimination at the hands of the police. In support of her submissions Ms. Iyer relied on the judgment of the Supreme Court in ***Ramesh Kumari v. State of Delhi & Ors., AIR 2006 SC 3376, Lallan Choudhary's case (supra),*** the judgment of this court in ***Dnyandeo's case (supra),*** the judgment of the Punjab and Haryana High Court in ***Gurjant Singh v. State of Punjab, 1998 Cri. L.J. 588*** and the judgment of the Karnataka High Court in ***M.S. Saini v. Secretary, Department of Home, Bangalore & Ors., 2004 Cr.L.J. 553.***

16. Learned counsel Mr. Kini adopted all the submissions of Mr. Mohite and Ms. Iyer. He placed reliance on the judgment of the Supreme Court in ***Bhajanlal's case (supra)*** and ***Ramesh Kumari's case (supra)***. He also relied on ***Mohindro v. State of Punjab, 2002 SCC Cri. 1087, Superintendent of Police, CBI v. Tapan Kumar Singh, 2003 SCC Cri. 1305 and Shakila Abdul Gafar Khan v. Vasant R. Dhoble, 2003 SCC Cri 1918***.

17. Mr. Borulkar, the learned Public Prosecutor contended that after the judgment of the Supreme Court in ***Bhajanlal's case (supra)***, there can be no doubt that if an officer in charge of a police station receives any information

relating to the commission of a cognizable offence, he has no option but to reduce it in writing and register an offence. According to Mr. Borulkar, however, in certain cases, it is necessary to ascertain the truthfulness or otherwise of the allegations made in the complaint. He submitted that the modalities of ascertaining the truthfulness or otherwise would depend upon the nature of the allegations and the nature of the offence alleged. Mr. Borulkar contended that in case of criminal breach of trust or cheating, it may be necessary to ask the complainant to disclose cogent materials regarding the ingredients of such offence. Mr. Borulkar submitted that in an exceptional case, it is possible that no such exercise is necessary. According to Mr. Borulkar, whether a complaint discloses a cognizable offence or not is to be primarily decided on the basis of the contents of the complaint and the material in support thereof or as a result of discreet enquiry conducted by the police officer. Mr. Borulkar further submitted that in ***Shashikant v. Central Bureau of Investigation & Ors., JT 2006 (9) SCC 603***, the Supreme Court has discussed the provisions of the CBI Manual which provides the procedure for preliminary enquiry and held that to carry out the preliminary enquiry even under the Code is not unknown. Mr. Borulkar then submitted that Rule 113(2) of the Police Manual provides for an enquiry before registration of FIR. He submitted that the provisions of the Police Manual and the provisions of CBI Manual have the same object and, therefore, the observations of the Supreme Court made while appreciating the procedure prescribed by CBI Manual

would be equally applicable to the provisions of Rule 113(2) of the Police Manual. In support of his submissions, Mr. Borulkar relied on the judgments of the Supreme Court in ***Bhagwat Joshi's case (supra)*** and ***P. Sirajuddin Etc. v. State of Madars, Etc., 1970 (1) SCC 595*** and the judgment of this court in ***Kotak Mahindra Bank Limited v. Nobiletto Finlease & Investment Pvt. Ltd. & Anr., 2005 (3) Mh.L.J. 512***. Mr. Borulkar pointed out that the requirement of preliminary enquiry as contemplated in paragraphs 80 and 81 of ***Bhajanlal' scase (supra)*** is also held to be necessary in case of medical practitioners by the Supreme Court in ***Jacob Mathew v. State of Punjab & Anr. 2005 (6) SCC 1***. Mr. Borulkar submitted that requirement of preliminary inquiry cannot be restricted to public servants or to doctors. Whether it is necessary or not will depend on facts and circumstances of each case. Mr. Borulkar further pointed out that alternative remedy of filing a private complaint is always open to a person who is aggrieved by the refusal of the police officer to register an offence. In this connection, he relied on ***Minu Kumari' scase (supra)***. He submitted that since alternative remedy of filing a private complaint is available, writ jurisdiction of this court should not be invoked in such cases. In this connection, he relied on ***Hari Singh v. State of U.P. (2006) 5 SCC 733***. Mr. Borulkar contended that if the investigation officer considers it necessary to conduct preliminary enquiry before recording FIR, such officer shall record the information in the station diary before proceeding to enquire into the matter even for the purpose of ascertaining the

truthfulness of the accusation. According to Mr. Borulkar, the station diary should disclose the steps taken towards preliminary enquiry by the police officer pursuant to the complaint lodged by any person. The preliminary enquiry should be completed by the police officer expeditiously and the officer who conducts it, must apprise the superior officer about the outcome of the preliminary enquiry and communicate the same to the complainant in the event he decides not to register the FIR based on his finding in the preliminary enquiry. If any officer refuses to register an offence, mala fide, though an offence is disclosed, the State Government can proceed against him departmentally. Mr. Borulkar urged that this court should hold that preliminary inquiry is legal because such a view will be in tune with the Supreme Court's judgments and the judgment of this court in ***Kotak Mahindra' case (supra)***.

18. In reply, Mr. Mohite, the learned counsel for the petitioners contended that reliance placed by Mr. Borulkar on the above judgments is misplaced. He submitted that in ***Bhagwant Joshi' case (supra), P. Sirajuddin' case (supra)*** and in ***Shashikant' case (supra)***, the Supreme Court was dealing with cases arising out of Prevention of Corruption Act. Requirement of preliminary enquiry in such cases assuming it is there, cannot be read into other cases. Ratio of those judgments is not applicable to the present case. Mr. Mohite submitted that in ***Shashikant' case (supra)***, the Supreme Court has made a reference to ***Vineet Narain' case (supra)***. In ***Vineet Narain' case (supra)***,

the Supreme Court has observed that the CBI Manual based on statutory provisions of the Code provides essential guidelines for CBI' sfunctioning. Referring to CBI Manual in ***Shashikant' s case (supra)***, the Supreme Court has held that it provides for a preliminary inquiry which in terms of paragraph 9.1 of the CBI Manual may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. Mr. Mohite contended that in ***Shashikant' s case (supra)***, the CBI had received an anonymous complaint. The question was whether it was obligatory on the part of respondent 1 to lodge a FIR and carry out a full-fledged investigation about the allegations made in the complaint. Mr. Mohite contended that on the basis of CBI Manual, the Supreme Court observed that a preliminary enquiry may be carried out to find out the truth or otherwise of the allegations contained in the complaint. Mr. Mohite contended that CBI Manual cannot be equated with Police Manual. Mr. Mohite submitted that the judgments cited by Mr. Borulkar refer to a totally different fact-situation. Mr. Mohite further submitted that the Supreme Court has not made a departure from its view in ***Bhajanlal' s case (supra)*** and that must prevail.

19. Before we proceed to deal with the arguments advanced by the learned counsel, it is necessary to reproduce section 154 of the Code. It reads thus :

> *"154. Information in cognizable cases. - (1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person given it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.*
>
> *(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the information.*
>
> *(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence."*

20. We shall now refer to the various judgments on which reliance is placed by the learned counsel appearing for the parties. In our opinion, the judgment of the Supreme Court in ***Bhajanlal' scase (supra)*** sets at rest all doubts. We must begin with it.

21. In ***Bhajanlal' scase (supra)***, while dealing with the scope of powers of the High Court under Article 226 of the Constitution of India and under Section 482 of the Code in relation to quashing of the FIR, the Supreme Court

laid down categories in which the said powers could be exercised. The Supreme Court also dealt with the legal principles governing the registration of a cognizable offence and the investigation arising therefrom. It is necessary to refer to the observations of the Supreme Court in the said judgment.

22. The Supreme Court has observed in that case that "the legal mandate enshrined in Section 154 (1) is that every information relating to the commission of a ' cognizable offence' if given orally or in writing to an officer in charge of a police station and signed by the informant should be entered in a book to be kept by such officer in such form as the State Government may prescribe which form is commonly called as ' First Information Report' and which act of entering the information in the said form is known as registration of a crime or a case".

23. The Supreme Court further observed that "at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence in compliance with the mandate of Section 154(1) of the Code, the concerned police officer cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not reliable or credible. On the other hand, the officer in charge of a police station is

statutorily obliged to register a case and then to proceed with the investigation, if he has reason to support the commission of an offence which he is empowered under Section 156 of the Code to investigate, subject to the proviso to Section 157".

24. The Supreme Court further went on to say that "in case an officer in charge of a police station refuses to exercise the jurisdiction vested in him and to register a case on the information of a cognizable offence, reported and thereby violates the statutory duty cast upon him, the person aggrieved by such refusal can send the substance of the information in writing and by post to the Superintendent of Police concerned who, if satisfied that the information forwarded to him discloses a cognizable offence, should either investigate the case himself or direct an investigation to be made by any police officer subordinate to him in the manner provided by sub-section (3) of Section 154 of the Code".

25. The Supreme Court further observed that "in Section 154(1) of the Code, the legislature in its collective wisdom has carefully and cautiously used the expression 'information' without qualifying the same. The Supreme Court made it clear that the police officer should not refuse to record an information relating to the commission of a cognizable offence and to register a case thereon on the ground that he is not satisfied with the

reasonableness or credibility of the information. In other words, 'reasonableness' or 'credibility of the information is not a condition precedent for the registration of a case. The Supreme Court found that an overall reading of all the provisions of the Codes makes it clear that the condition which is a sine qua non for recording a FIR is that there must be an information and that information must disclose a cognizable offence.

26. The Supreme Court again reiterated that it is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station satisfying the requirements of Section 154(1) of the Code, the said police officer has no other option except to enter the substance thereof in the prescribed form, that is to say, to register a case on the basis of such information.

27. The Supreme Court then considered whether the registration of a criminal case under Section 154(1) of the Code ipso facto warrants the setting in motion of an investigation under Chapter XII of the Code.

28. After referring to Sections 156, 157 and 159 of the Code, the Supreme Court observed that the core of these Sections is that, if a police officer has reason to suspect the commission of a cognizable offence, he must either proceed with the investigation or cause an investigation to be proceeded

with by his subordinate; that in a case where the police officer sees no sufficient ground for investigation, he can dispense with the investigation altogether; that the field of investigation of any cognizable offence is exclusively within the domain of the investigating agencies over which the courts cannot have control and have no power to stifle or impinge upon the proceedings in the investigation so long as the investigation proceeds in compliance with the provisions relating to investigation and that it is only in a case wherein a police officer decides not to investigate an offence, the concerned Magistrate can intervene and either direct an investigation or in the alternative, if he thinks fit, he himself can, at once proceed or depute any Magistrate subordinate to him to proceed to hold a preliminary inquiry into or otherwise to dispose of the case in the manner provided in the Code.

29. The Supreme Court further observed that the commencement of investigation by a police officer is subject to two conditions. Firstly, the police officer should have reason to suspect the omission of a cognizable offence as required by Section 157(1) and secondly, the police officer should subjectively satisfy himself as to whether there is sufficient ground for entering on an investigation even before he starts an investigation into the facts and circumstances of the case as contemplated under clause (b) of the proviso to Section 157 (1) of the Code.

30. In ***Mohindro' s case (supra)***, the Supreme Court was dealing with a situation where the appellant had approached the authority for registering a case against the accused but the police never registered a case and never put the law in motion. Having failed in an attempt in the High Court to get a case registered, she approached the Supreme Court. The counsel for the State of Punjab stated that there had been an enquiry. The Supreme Court expressed that there can be no enquiry without registering a criminal case. The Supreme Court observed that on the facts alleged, it transpired that the appellant approached the police for registering a case and get the allegation investigated into and yet for no reason whatsoever the police failed to register the case. The Supreme Court in the circumstances directed that a case be registered on the basis of the reports lodged by the appellant and thereafter, the matter be duly investigated into and appropriate action be taken accordingly.

31. In ***Tapan Kumar's case (supra)***, while dealing with similar question, the Supreme Court held that the information given must disclose the commission of a cognizable offence and the information so lodged must provide a basis for the police officer to suspect the commission of a cognizable offence. The Supreme Court further observed that at this stage it is enough if the police officer on the basis of the information given suspects the commission of a cognizable offence and not that he must be convinced or satisfied that a

cognizable offence has been committed. If he has reason to suspect, on the basis of information received, that a cognizable offence may have been committed, he is bound to record the information and conduct an investigation. The Supreme Court clarified that it is only after a complete investigation that he may be able to report on the truthfulness or otherwise of the investigation.

32. In ***Shakila' scase (supra)***, the Supreme Court reiterated the same principle and directed that action be taken against those officers who did not register the FIR.

33. In ***Ramesh Kumari v. State (N.C.T. Of Delhi) & Ors., 2006 (1) Crimes 229 (SC)***, the grievance of the appellant was that though an information of a cognizable offence having been committed by a police officer had been filed by the appellant before the SHO Kapashera, no case was registered by the SHO. Thereafter, the matter was brought to the notice of the Police Commissioner without any result. The appellant approached the Delhi High Court. The High Court found that the appellant had filed a contempt petition in the High Court and it was pending. On the basis of the information filed by the appellant, the High Court found it difficult to direct registration of complaint. The High Court observed that the appellant had an alternative remedy available to her. The High Court directed the respondents

who were seized of the petitioner's complaint to examine it and pass appropriate orders. The Supreme Court did not approve of the High Court' s approach. It was argued before the Supreme Court that pursuant to the High Court's direction the complaint had been subsequently examined and it was found that no genuine case was established. The Supreme Court was not convinced by this submission. The Supreme Court observed that genuineness or credibility of the information can only be considered after registration of the case. Genuineness or credibility is not a condition precedent for registration of a case. The Supreme Court referred to its judgment in ***Bhajanlal' s case (supra)*** and held that the provision of section 154 of the Code is mandatory and the concerned officer is duty bound to register the case on the basis of an information disclosing cognizable offence. The Supreme Court clarified that availability of an alternative remedy or pendency of a contempt petition would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer. Since the complaint was against a police officer, the Supreme Court directed the CBI to register the case and complete investigation.

34. In ***Lallan Chaudhary & Ors., v. State of Bihar & Anr., 2006 SAR (Criminal) 934***, the Sub-Divisional Judicial Magistrate, before whom the complaint was lodged had endorsed the complaint to the SHO, Police Station, Ghorasahan, to register FIR and to investigate. The SHO however registered

the case under sections 452, 380, 323 read with section 34 of the IPC against the accused. Ultimately, the charge-sheet was submitted by the police only under sections 452, 323 read with section 34 of the IPC. No case was registered against the accused for offences disclosed in the complaint under sections 147, 148, 149, 448 and 395 of the IPC and no investigation was carried out by the police in respect of the said sections. The Supreme Court observed that the police had committed grave miscarriage of justice. The Supreme Court observed that section 154 of the Code casts a statutory duty upon police officer to register the case as disclosed in the Complaint and then to proceed with the investigation. The Supreme Court further observed that mandate of section 154 is manifestly clear that if any information disclosing a cognizable offence is laid before an officer in charge of a police station, such police officer has no option except to register the case on the basis of such information. After referring to ***Ramesh Kumari's case (supra)***, the Supreme Court observed that mandate of section 154 of the Code is that at the stage of registration of a crime or a case on the basis of the information disclosing a cognizable offence, the police officer concerned cannot embark upon an enquiry as to whether the information, laid by the informant is reliable and genuine or otherwise and refuse to register a case on the ground that the information is not relevant or credible. The Supreme Court clarified that reliability, genuineness and credibility of information are not condition precedent for registering a case under section 154 of the Code. The

Supreme Court held that the SHO was statutorily obliged to register the case on the basis of the offence disclosed in the complaint and proceed with investigation in terms of procedure contained under sections 156 and 157 of the Code. The Supreme Court was of the view that the High Court had correctly corrected the error.

35. Reference must also be made to the judgment of this court in ***Dnyandeo's case (supra)*** where this court was dealing with a similar question. This court was of the view that the application tendered by the complainant therein clearly indicated that it was a report or information regarding commission of a cognizable offence. Yet no offence was registered. It is in this context, after referring to the judgment of the Supreme Court in ***Bhajanlal' scase (supra)***, this court observed that when information lodged discloses a cognizable offence, even if the police station officer has doubt as to whether the information discloses a cognizable offence or not, he cannot avoid his responsibility of registering an offence. This court observed that non-registration of crime will not serve the purpose of anybody. If the informant gives false information, the police as well as those against whom false information is given can take action against the information but it is illegal to refuse to register crime by branding the information as false because that can be decided only after investigation. Similar view has been taken by the Punjab & Haryana High Court in ***Gurjant Singh' scase (supra)*** and by the

Karnataka High Court in ***M.S. Saini's case (supra)***.

36. From the bare reading of the relevant provisions of the Code and from the above judgments, it is clear that if information laid before an officer in charge of a police station discloses a cognizable offence, he has no option except to register a case on the basis thereof. If cognizable offence is disclosed, the police officer cannot embark upon an enquiry as to whether the information laid by the informant is reliable and genuine or otherwise and refuse to register the case.

37. It is now necessary to examine the submission of Mr. Borulkar, the learned Public Prosecutor that before registration of the case on the basis of the FIR, it is necessary and open for the police to conduct a preliminary enquiry to ascertain whether the facts stated therein are true or false or whether they disclose any cognizable offence or not.

38. In ***P. Sirajuddin's case (supra)***, a complaint was received by the Chief Minister of the State of Madras from one R. Nadar against the appellant who was the Chief Engineer, High Ways and Rural Works, Madras. The Chief Minister asked the Director of Vigilance and Anti Corruption to make confidential enquiries. On 10/3/1964, Government received a note from the said officer casting aspersion on the appellant's reputation. The Chief

Minister put an endorsement on the note stating that he had asked the Director to pursue the investigation further. Thereupon, the Chief Secretary orally ordered a full fledged enquiry in the matter. The Director of Vigilance registered an enquiry. Several statements came to be recorded. On 27/6/1964, a FIR was lodged in the Directorate of Vigilance and Anti Corruption Madras and the case was registered. The offences to be investigated were under sections 161 and 165 of the IPC and under section 5 (1)(a) and (d) of the Prevention of Corruption Act. The complaint was made by the Deputy Superintendent of Police, Vigilance and Anti Corruption to the Addl. Superintendent of Police of the same Department. The Directorate of Vigilance and Anti Corruption which had been set up under a Government Order was declared to be a police station under clause (s) of sub-section (1) of section 4 of the Code by a notification dated 25/5/1964. In the complaint it was stated that a criminal case would be registered against the appellant as a regular investigation alone would facilitate the collection of additional evidence. During the investigation, number of witnesses were examined, out of which some of them had been examined in the ` preliminary or detailed enquiry' conducted earlier. Sanction to prosecute the appellant was obtained and a charge-sheet was filed against the appellant.

39. The appellant filed a writ petition in the High Court challenging the investigation, inter alia, on the ground that there was a violent departure from

the provisions of the Code. The High Court partly found in favour of the appellant. The appellant approached the Supreme Court. The Supreme Court discussed the relevant provisions of the Code and observed that all the provisions of the Code are aimed at securing a fair trial and the idea is that no one should be put to the harassment of a criminal trial unless there are good and substantial reasons for holding it. On facts, the Supreme Court found that the enquiry officer was a high ranking police officer and simply because he was not exercising power under Chapter XIV of the Code, in that a formal FIR had not been lodged, he deliberately ignored the investigation contained in the said Chapter. He overstepped the limits of investigation contained in the said chapter. Though the Supreme Court found fault with the conduct of the enquiry officer, it did not hold that the enquiry was illegal. It examined the procedure adopted by the enquiry officer in the light of the provisions of the Code. The Supreme Court observed that before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misconduct and a first information is lodged against him, there must be some suitable enquiry into the allegations by a responsible officer, because lodging of such a report against persons holding top positions may do incalculable harm to such officers. It is clear, therefore, that the Supreme Court accepted that there can be a preliminary enquiry into the allegations before the FIR is lodged.

40. In ***Bhajanlal' scase (supra)***, the Supreme Court referred to the observations of Mitter J. in ***Sirajuddin' scase (supra)*** and expressed that it was in agreement with those observations. We may reproduce the said observations.

> *Before a public servant, whatever be his status is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct of the type alleged in this case and first information is lodged against him, there must be some suitable preliminary enquiry into the allegations by a responsible officer. The lodging of such a report against a person specially one who like the appellant occupied the top position in a department, even if baseless, would do incalculable harm not only to the officer in particular but to the department he belonged to, in general ..... The means adopted no less than the end must be impeccable."*

41. In ***Jacob Mathew' scase (supra)***, the appellant doctor along with another doctor was charged under section 304-A read with section 34 of the IPC. On a reference, the Supreme Court was considering the concept of `negligence' in particular `professional negligence' and as to when and how it gives rise to an action under the criminal law. The Supreme Court noted that the cases of doctors being subjected to criminal prosecution are on an increase. The Supreme Court emphasised the need to protect doctors from frivolous or unjust prosecutions. The Supreme Court observed that many a complainant prefer recourse to criminal process as a tool for pressurising the medical professional for extracting uncalled for or unjust compensation and expressed that such malicious proceedings have to be guarded against. The

Supreme Court observed that the investigating officer should before proceeding against the doctor accused of rash and negligent act or omission obtain an independent and competent medical opinion preferably from a doctor. Therefore, the Supreme Court recognized the need to make some preliminary inquiry before a case is registered against a doctor on the basis of complaint alleging cognizable offence.

42. In ***Shashikant 's case (supra)*** the appellant had made an anonymous complaint to the CBI alleging corrupt practices and financial irregularities on the part of some officers of Railways. On the basis of a source information, a preliminary inquiry was conducted in which the statements of various officers were recorded. The investigating officer was of the opinion that it was not necessary to register a FIR. He recommended holding of departmental proceedings. This recommendation found favour with the higher officers. Departmental proceedings were initiated. Penalties were imposed on the said officers and the cases were closed against them. In the meanwhile the appellant was transferred. He challenged his transfer before the Central Administrative Tribunal. His application was rejected. He then filed a writ petition, inter alia, praying for reopening of the preliminary inquiry and for a direction to the CBI to register offence against the said officers. The High Court dismissed the said writ petition holding that the grievance of the appellant that the CBI was not doing its duty was not well founded. The

appellant challenged the said order in the Supreme Court. It was argued before the Supreme Court that procedure prescribed in the Code was not followed.

43. The Supreme Court referred to the provisions of the Delhi Special Police Establishment Act, 1946 under which the CBI is constituted. The Supreme Court observed that this Act applies in regard to charges of corruption made against the employees of Union of India and CBI Manual was made by the Central Government providing for detailed procedure as regards the mode and manner in which complaint against public servants are dealt with. The Supreme Court then quoted extensively from its judgment in ***Vineet Narain & Ors. v. Union of India & Anr., JT 1997 (10) SC 247***, where the Supreme Court has referred to CBI Manual which provides for a preliminary inquiry. The Supreme Court observed that a distinction has been made between a preliminary inquiry and a regular case. A preliminary inquiry may be converted into a regular case as soon as sufficient material becomes available to show that prima facie there has been commission of a cognizable offence. The Supreme Court then observed that although ordinarily in terms of section 154 of the Code, when a report is received relating to the cognizable offence, FIR should be lodged, to carry out a preliminary inquiry even under the Code, is not unknown. The Supreme Court further observed that when an anonymous complaint is received, no investigating officer would initiate

investigative process immediately thereupon. It may for good reasons carry out a preliminary enquiry to find out the truth or otherwise of the allegations contained therein. This judgment clearly indicates that preliminary enquiry need not be restricted only to the cases of public servants charged with corruption charges. It is contemplated in the Code also.

44. We must also refer to ***Bhagwant Joshi's case (supra).*** The respondent therein was convicted under section 5(2) of the Prevention of Corruption Act. On appeal, the High Court set aside the conviction. It appears that in that case, Special Police Establishment, Lucknow had received a report that the respondent had misappropriated Government money. He directed S.I. Mathur to make an enquiry. S.I. Mathur checked the railway record and found the information to be correct. He registered a case and submitted a report accordingly. He then applied to the Magistrate for permission to investigate the case. Thereafter, he made further investigation, seized documents and submitted charge-sheet against the accused. It is not necessary for us to narrate all other facts. Suffice it to say that when the matter reached the Supreme Court, the only question which was argued before it was whether the High Court was right in acquitting the accused on the ground that the investigation made by S.I. Mathur before he obtained permission of the Magistrate vitiated the trial. The Supreme Court found the prosecution evidence to be true. The Supreme Court found that the accused had full say

in the matter and therefore conviction cannot be set aside on the ground of some irregularity or illegality in the matter of investigation. The Supreme Court further observed that not only the trial was fair and evidence convincing, but even the earlier defect was rectified by having practically a de novo investigation in compliance with the provisions of the Code. The High Court order was set aside and the respondent/accused was sentenced to imprisonment.

45. It is pertinent to note that though Mudholkar J. concurred with Subba Rao, J. on the question of sentencing the accused, he did not agree with Subba Rao, J.' sconclusion that there was, in fact, a defect or irregularity in the investigation in this case. Justice Mudholkar referred to the Supreme Court judgment in ***H.N. Rishbud & Anr. v. State of Delhi, AIR 1955 SC 196*** where it is held that under the Code, investigation consists generally of the following steps; (1) Proceeding to the sport, (2) Ascertainment of the facts and circumstances of the case, (3) Discovery and arrest of the suspected offender, (4) Collection of evidence relating to the Commission of the offence which may consist of (a) the examination of various persons (including the accused) and the reduction of their statements into writing, if the officer thinks fit, (b) the search of places or seizure of things considered necessary for the investigation and to be produced at the trial and (5) formation of the opinion as to whether on the material collected there is a case to place the accused

before a Magistrate for trial and if so taking the necessary steps for the same by filing of a charge-sheet under section 173. Justice Mudholkar then observed that the Supreme Court has however not said that if a police officer takes merely one or two steps indicated by it, what he has done must necessarily be regarded as investigation. Justice Mudholkar further observed that in the absence of any prohibition in the Code, express or implied, he was of opinion that it is open to a police officer to make preliminary enquiries before registering an offence and making a full scale investigation into it. In ***Bhajanlal' s case (supra)*** the Supreme Court quoted with approval Justice Mudholkar's observations made in this case that merely making some preliminary enquiries upon receipt of information from an anonymous source or a source of doubtful reliability for checking up the correctness of the information does not amount to collection of evidence and so cannot be regarded as investigation. Thus, the Supreme Court endorsed the opinion expressed by Justice Mudholkar that there can be a preliminary inquiry before a cognizable offence is registered. It is pertinent to note that in ***Shashikant' s case (supra)*** also, the Supreme Court has quoted Justice Mudholkar' s observations with approval.

46. In ***Kotak Mahindra' s case (supra)***, on which Mr. Borulkar has placed heavy reliance, a complaint was filed by the respondent alleging that the petitioner-bank through its' directors and officers was seeking to extort money.

One of the questions before this court was whether prior to the registration of FIR, in a given case, it was open for the police to hold a preliminary inquiry. This court referred to Rule 113(12) of the Bombay Police Manual, 1959. We may reproduce the same for convenience.

> *"It is always advisable, before recording first information, to warn the informant against giving false or exaggerated information and also to give him an opportunity to think coolly what he wishes to say. If the information, though whatever channel received, does not disclose a cognizable offence but indicates the necessity for further enquiry, the Police Station officer should note the information in the station diary and proceed to the place concerned; and if after inquiry he is satisfied that the facts disclose a cognizable offence, he should deal with it according to law.*
>
> *Care should, however, be taken not to effect arrest unless adequate evidence is available against the accused." (emphasis supplied).*

47. This court observed that the above Rule requires that if the officer considers it necessary to conduct preliminary enquiry before recording FIR, such officer shall record the information in the station diary before proceeding to enquire into the matter even for the purpose of ascertaining the truthfulness of the accusation. This court further observed that the station diary should definitely disclose even the preliminary steps taken towards the preliminary enquiry pursuant to the complaint. The station diary should also disclose if any person is called to the police station, as to what point of time he was called, when he attended the police station and upto what time he was in the

police station and for what purpose. This court further observed that where the police authorities are required to hold preliminary enquiry it should preferably and of course as far as possible, be a discreet enquiry. This court further held that preliminary enquiry may be necessary in a given case and may not be held as a general rule. Whether it is necessary or not would depend on facts and circumstances of each case. In cases where the accusations made in the complaint are doubtful, observed this court, certainly the police can enquire as to whether the accusations prima facie appear to disclose a cognizable offence. This court also referred to Standing Order No.34 and held that station diary should disclose the steps taken by the police officer while conducting the preliminary inquiry. We may quote the relevant paragraph from the said judgment.

> *"There cannot be doubt that once a complaint is filed, it is necessary for the police to ascertain whether the facts stated therein are true or false and whether the same disclose any cognizable offence or not. However, the modalities of ascertaining the truthfulness of the allegations in the complaint would depend upon the nature of the allegations and the nature of the offence alleged. In case of criminal breach of trust or cheating, for ascertaining the truthfulness of the allegations, primarily it would be necessary to ascertain the same by asking the complainant to disclose cogent materials regarding the ingredient of such offence by the accused and unless such materials are disclosed and the police officer is prima facie satisfied about the commission of such offence, question of calling the person accused of commission of such offence cannot arise, unless, of course in an exceptional case it may be otherwise. But such an exceptional case is to be made out by the complaint or at least the police officer should be satisfied about the same.*

> *Undoubtedly, once such materials are produced and if the same disclose cognizable offence, the police officer can certainly investigate into the matter by following the procedure prescribed for investigation in relation to such offence. Whether a complain discloses cognizable offence or not, it is to be primarily decided based on the contents of the complaint and the materials in support of thereto or as a result of discreet enquiry. In a deserving case enquiry can be made with the person accused of having committed the offence. This elementary knowledge should be possessed by every police officer empowered to investigate into cognizable offence."*

48. We are in agreement with ***`Kotak Mahindra***' to the extent it prescribes the procedure. We feel that where the information received by a police officer does not disclose a cognizable offence but indicates the necessity of further inquiry, preliminary inquiry prior to the registration of offence can be conducted. We have already referred to the judgment in ***Shashikant*' *s case*** where the Supreme Court has quoted from its judgment in ***Vineet Narain*' *s case*** and after referring to CBI Manual which provides for preliminary inquiry held that preliminary inquiry prior to the registration of offence is not unknown even under the Code. On the same analogy, it can be concluded that Rule 113(12) of the Bombay Police Manual, which we have already quoted above contemplates a preliminary inquiry before recording FIR to find out whether cognizable offence is disclosed or not.

49. There is no reason to hold that preliminary enquiry can be conducted

only in respect of complaints against public servants holding top positions. If a complaint does not disclose a cognizable offence, but there appears to be a need of further inquiry to ascertain whether cognizable offence is disclosed or not, preliminary inquiry can be conducted before taking a decision whether to register the offence or not. Similarly, where source of information is of doubtful reliability i.e. an anonymous complaint preliminary inquiry can be conducted for checking up correctness of the information.

50. It is keeping this angle in view in ***Jacob Mathew' scase (supra)***, the Supreme Court has held that in cases of doctors before registration of FIR expert doctor' sopinion should be obtained. As held by this court in ***Kotak Mahindra' sase (supra)***, in cases of alleged criminal breach of trust it may be necessary for the police to ask the complainant to disclose cogent material in support of the allegation. If merely on the basis of information of doubtful reliability i.e. an anonymous complaint, cognizable offences are registered that can lead to great injustice. At the same time, the police cannot avoid registering a cognizable offence, which is clearly disclosed on the spacious ground that they have to conduct a preliminary inquiry. Where cognizable offence is disclosed, it must be registered. Preliminary inquiry will be necessary where it is necessary to ascertain whether cognizable offence is disclosed or not. Such inquiry should be done expeditiously and as far as possible, in the interest of the complainant, it

should be discreet and in tune with Rule 113(12)of the Bombay Police Manual. The steps taken by the officer must be reflected in the station diary maintained at the police station so as to ensure transparency. Where according to the police officer, cognizable offence is not disclosed, he must inform his superior officer and the superior officer must communicate the decision to the complainant. In such a case, the complainant can file a private complaint and if the police officer has failed in his duty, the Magistrate can set the matter right. The complainant is not without a remedy. The procedure laid down by this court in ***Kotak Mahindra' case (supra)*** on the basis of the provisions of the Police Manual will have to be followed by the police in this behalf.

51. We shall now deal with the question whether writ petitions or petitions under section 482 of the Code making grievance about non-registration of FIR disclosing cognizable offences should be entertained when alternative remedy of filing a private complaint is open to the complainant.

52. In **All India Institute of Medical Sciences Employees Union v. Union of India and Ors. (1996) II SCC 582**, the petitioner had laid all the necessary information before the police as regards the offences committed by the Director of Institute of Medical Sciences but no action in that behalf had been taken. The petitioner moved the Delhi High Court for appropriate

orders. The Delhi High Court did not entertain the petition. When the matter reached the Supreme Court, the Supreme Court observed that under Section 154 of the Code on information relating to the commission of a cognizable offence being received, it has to be reduced to writing and the officer in charge of the police station has been empowered under Section 156 of the Code to investigate into the cognizable case as per the procedure prescribed under Section 157 of the Code. After conducting the investigation prescribed in the manner envisaged in Chapter XII, charge-sheet has to be submitted in the concerned court as envisaged in Section 173 of the Code. The Supreme Court clarified that when the information is laid with the police but no action in that behalf is taken, the complainant is given power under Section 190 read with Section 200 of the Code to lay the complaint before the concerned Magistrate and the concerned Magistrate is required to enquire into the complaint as provided in Chapter XV of the Code. In case the Magistrate after recording evidence finds a prima facie case, instead of issuing process to the accused, he is empowered to direct the police concerned to investigate into the offence under Chapter XII of the Code and to submit a report. If he finds that the complaint does not disclose any offence to take further action, he is empowered to dismiss the complaint under Section 203 of the Code. In case he finds that the complaint/evidence recorded prima facie discloses an offence, he is empowered to take cognizance of the offence and issue process to the accused. The Supreme Court observed that the petitioner

therein had not adopted either of the procedure provided under the Code and hence he was not entitled to approach the High Court by filing a writ petition and the High Court was justified in refusing the relief to him.

53. In ***Gangadhar Mhatre v. State of Maharashtra & Ors. (2004) 7 SCC 768***, the complainant had preferred a writ petition in the High Court inter alia, for transfer of investigation on the ground that there was laxity of investigation. The High Court noted that the case had been committed to the Sessions Court and hence, there was no question of transferring the investigation to some other agency. The complainant approached the Supreme Court. The Supreme Court referred to its judgment in ***All India Institute of Medical Sciences Employees Unions Case (supra)*** where it is observed that in such cases writ petition is not to be entertained and held that writ petition was not the proper remedy and without availing the remedy available under the Code, the appellant could not have approached the High Court by filing a writ application.

54. In **Minu Kumari & Anr. v. State of Bihar & Ors., (2006) 2 SCC (Cri.)** the Supreme Court considered the scope of Section 482 of the Code of Criminal Procedure. The Supreme Court referred to its judgments in **All India Institute of Medical Sciences Employees' Union (supra)** and **Gangadhar Mhatre' scase (supra)** and reiterated that when information is laid with the

police, but no action in that behalf is taken, the complainant is given power under Section 200 of the Code to lay the complaint before the concerned Magistrate and in such cases writ petition should not be entertained.

55. We have already referred to ***Ramesh Kumari' s case (supra)***, where the grievance of the appellant was that though an information of a cognizable offence having been committed by a police officer had been filed by the appellant, the SHO has not registered a case against the police officer. The Supreme Court held that availability of an alternative remedy would be no substitute in law not to register a case when a citizen makes a complaint of a cognizable offence against a police officer.

56. The above judgments make it clear that normally if the remedy of filing a private complaint is available, a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code should not be entertained. But in gross cases of grave injustice, like non registration of a cognizable offence committed by a police officer availability of alternative remedy should not persuade this court to deny the petitioner the necessary relief by rejecting his writ petition filed under Article 226 of the Constitution or petition filed under section 482 of the Code. Whether such petitions should be entertained or not must be decided on the facts of each case and must be

left to judicial discretion. Obviously such petitions would be entertained in exceptional cases of grave injustice.

57. From the above discussion, the following conclusions emerge, which answer the questions raised before us.

(a) When an information relating to the commission of a cognizable offence is received by an officer in charge of a police station, he has to register a FIR as required by section 154(1) of the Code. If the information discloses a cognizable offence, FIR must be registered.

(b) If the information received does not disclose a cognizable offence but indicates the necessity for further inquiry, preliminary inquiry may be conducted to ascertain whether cognizable offence is disclosed or not.

(c) Where the source of information is of doubtful reliability i.e. an anonymous complaint, the officer in charge of the police station may conduct a

preliminary inquiry to ascertain the correctness of the information.

(d) If his inquiry discloses cognizable offence, he must register FIR. If it does not, he must accordingly inform the superior officer and the superior officer shall communicate the decision to the complainant.

(e) Preliminary inquiry has to be done having regard to Rule 113(12) of the Bombay Police Manual and all the steps taken by the police officer while conducting the preliminary inquiry must be reflected in the station diary.

(f) Preliminary inquiry must be expeditious and as far as possible it must be discreet.

(g) Before a public servant is publicly charged with acts of dishonesty which amount to serious misdemeanour or misconduct and a FIR is lodged against him, there must be some suitable preliminary enquiry into the allegations, by a responsible officer.

But preliminary enquiry is not restricted only to cases where the accused are public servants or doctors or professionals holding top positions. As to in which case preliminary inquiry is necessary will depend on facts and circumstances of each case.

(h) As to what type of preliminary inquiry is to be conducted will depend on the facts and circumstances of each case.

(i) Observations of this court in ***Kotak Mahindra' s (supra)***, cover the procedure and modalities of preliminary inquiry which will have to be followed by the police officer.

(j) It is only in cases where cognizable offence is not disclosed and there is need to conduct further inquiry to ascertain whether cognizable offence is disclosed or not that the police officer can conduct preliminary inquiry and not in all cases. The police officer cannot avoid his duty of registering offence if

cognizable offence is disclosed. Action may have to be taken against an erring officer who does not register the FIR if information received by him discloses cognizable offence.

(k) Whether a writ petition under Article 226 of the Constitution of India or a petition under section 482 of the Code filed by a person making a grievance that though the complaint filed by him discloses a cognizable offence, the police have not registered offence, should be entertained by this court or not will depend on facts and circumstances of each case.

(l) Ordinarily, aggrieved person should be relegated to the alternative remedy of filing a private complaint.

(m) However, in gross cases of grave injustice, such petitions can be entertained by this court. Such cases would obviously be exceptional.

58. We have already narrated the facts of the present case hereinabove. Mr. Borulkar, the learned Public Prosecutor submitted that with regard to the allegations made by the petitioner, the police are conducting a preliminary enquiry and the result whereof will be communicated to the petitioner. In view of this and in the light of our above conclusions, no further orders are necessary at this stage.

59. All the contentions raised in this petition except those which we have dealt with herein, are kept open.

60. The petition is disposed of in the aforestated terms.

(SMT. RANJANA DESAI, J.)

(ANOOP V. MOHTA, J.)